SUPREME COURT, U. S.
FILED
JAN 11 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973
No. 73-6067

ARDLESS HAWK,
Petitioner

v

JAMES H. LINCOLN, Judge of Probate, Juvenile Division, Et. al.,
Respondent

ARDLESS HAWK,
Petitioner-Appellant

v

THE CITY OF DETROIT, Et al.,
Respondents-Appellees.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS-APPELLEE, GEORGE W. CROCKETT, JR., JUDGE OF RECORDER'S COURT AND IRMA B. MILLER, COURT REPORTER, IN OPPOSITION

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THE INLAND PRESS, DETROIT, MICHIGAN

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

OPINION BELOW

The order of the Sixth Circuit Court of Appeals entered December 19, 1973, dismissing as frivolous, Petitioner's appeal thus affirming the decision and order of the United States District Court for the Eastern District of Michigan, South Division, dismissing the cause below is not yet reported. The opinion and order of the District Court entered March 26, 1973 is unpublished.

JURISDICTION

The order of the Court of Appeals was entered on December 19, 1973. A motion for leave to file a petition for writ of certiorari (taken by Respondents as a petition for writ of certiorari) was filed on January 9, 1974.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. DID THE COURT OF APPEALS ERR IN DISMISSING AS FRIVOLOUS PETITIONER'S APPEAL FROM THE DISTRICT COURT ORDER DISMISSING PETITIONER'S ACTION AGAINST RESPONDENTS, GEORGE W. CROCKETT, JR. AND IRMA B. MILLER ON GROUNDS OF JUDICIAL IMMUNITY WITHOUT THE INTRODUCTION OF EVIDENCE?

2. DID THE PETITIONER IN HIS ORIGINAL COMPLAINT FILED IN THE DISTRICT COURT STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED AS TO RESPONDENTS, GEORGE W. CROCKETT, JR. AND IRMA B. MILLER?

STATEMENT

Petitioner was convicted in a jury trial of having carnal knowledge of a female under the age of sixteen years, contrary to Section 750.520 of the Compiled Laws of Michigan, the said trial having taken place in the Recorder's Court of the City of Detroit, a state court of general criminal jurisdiction, with the Respondent, GEORGE W. CROCKETT, JR. sitting as trial judge and the Respondent, IRMA B. MILLER serving as official court (stenographer) reporter.

As a defendant in the criminal case, Petitioner was arrested on January 8, 1970 following investigation of a

complaint made three days earlier by his fourteen-year old daughter. On the day following his arrest, he was arraigned upon a warrant charging the offense aforementioned issued upon the complaint of the minor daughter; upon arraignment, he made a request for court-appointed counsel, but later retained his own. On January 19, 1970, ten days after arraignment, he appeared in Court with his retained attorney and waived preliminary examination, which is accorded by Michigan statute. The Court referred him for psychiatric evaluation upon which he was found competent to stand trial.

After a pre-trial provided under local rules of the Court, on March 4, 1970, the case was brought to trial before a jury on April 8, 1970, with these Respondents sitting in their official capacities, as aforesaid. Upon completion of proofs in the case and deliberation by the jury, Petitioner was convicted as charged and, following the receipt of a pre-sentence report, he was sentenced to a term of not less than ten years nor more than twenty years in the State Prison of Southern Michigan.

Respondent's conviction was affirmed by the Michigan (state) Court of Appeals, and, subsequently, his application for leave to appeal to the Michigan Supreme Court was denied by order issued December 28, 1971. Thereafter, Petitioner filed an in pro-per application for leave to file a delayed motion for new trial, which was denied by Respondent, trial judge, on January 25, 1972. Thereafter, Petitioner sought leave to appeal to the Michigan Court of Appeals, raising the same issues raised earlier in his application to the Michigan Supreme Court. Failing this, he again filed an application for leave to appeal to the State Supreme Court, asserting a number of grounds, some of which had

not been earlier presented. This application was denied on June 19, 1972; prior to its denial, however, Petitioner, on April 24, 1972, initiated one of the above-captioned civil actions (District Court Civil Action No. 38196) in the United States District Court for the Eastern District of Michigan, Southern Division, against a number of defendants, including Respondent, (criminal) trial Judge, GEORGE W. CROCKET, JR., and the Respondent, Court Reporter IRMA B. MILLER, seeking relief under the Civil Rights Act of 1871 (42 USC 1981, 1983 and 1985).

On August 10, 1972, Petitioner filed the second of the above-captioned civil causes (District Court Civil Action No. 38728), again seeking relief under the 1871 Civil Rights Act and adding as a defendant, the City of Detroit, and naming all of the defendants named in the previous action, which included not only the Respondent judge and Court Reporter, but his own defense counsel and virtually all persons who participated in his prosecution on the criminal charge.

Counsel was appointed for Petitioner in these civil actions at his request and dismissed upon his motion.

Both of the aforementioned civil causes were consolidated by the District Court upon motions of certain of the defendants and the filing of briefs thereon, the consolidated causes were dismissed on March 26, 1973.

Petitioner appealed this order of dismissal to the United State Court of Appeals for the Sixth Circuit, and on December 19, 1973, this appeal was dismissed by that Court as frivolous.

Petitioner seeks a writ of certiorari to the Court of Appeals for the Sixth Circuit.

ARGUMENT

1. Petitioner argues that the District Court erred in dismissing his action without granting an opportunity to present evidence in support of his claim, and relies on *Haines* v *Kerner,* 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed 2d 248 (1972), *Williams* v *Wainwright,* 461 F2d 1080 (1972) and other cases.

Respondents submit that the instant case is clearly distinguishable from *Haines* v *Kerner* and the other cases cited by Petitioner. In none of the cases relied upon by Petitioner was the principle of judicial immunity invoked or applicable. *Haines* v *Kerner* involved a suit under the Civil Rights Acts of 1871, as does the case at hand. In that case, however, the action was against the Governor of the State of Illinois and other state officers and prison officials, none being a judicial officer, and the claim was not premised upon any alleged acts of a judicial officer acting as such.

It is obvious from the complaint itself that if the acts attributed to the Respondent Judge were committed at all, they were committed in the course of the performance of his judicial duties as a judge of a court of criminal jurisdiction.

It is well settled that judicial immunity is a defense to an action under the 1871 Civil Rights Act.

In *Pierson* v *Ray,* (1967) 386 U.S. 547, 18 LEd 288, this Court had this to say (page 294 LEd.):

> "Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judical jurisdiction, as this Court recognizes when it adopted the doctrine, in *Bradley* v *Fisher,* 13 Wall 335, 20 LEd 646, (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it is not for the benefit of a malicious

> or corrupt judge, but for the benefit of the public whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequence."

The Court went on to state specifically that the common law immunity of judges was not abolished in the adoption of the 1871 Civil Rights Act.

The theory of judical immunity was rejected in the case of a minor judicial officer, was later expressly overruled by the same court in *Bauers* v *Heisel,* 361 F2d 581 (1966), the Court of Appeals saying in the later case, (p. 584):

> ". . . the reasoning employed and construction given (the Civil Rights Act of 1871) in *Tenney* v *Brandhove,* 341 U.S. 367, 95 LEd 1010, 71 S.Ct. 783 (1951) is contrary to the position we adopted in *Picking* and requires us to overrule it."

The case of *Tenney* v *Brandhove,* supra, cited in *Bauers* v *Heisel,* supra, was, of course, decided upon the issue of legislative rather than judical immunity. However, both legislative and judicial immunity are rooted in the common law, and neither was nullified by the (Civil Rights) Act. The opinion in the *Tenney* case, delivered by Mr. Justice Frankfurter, makes evident the rationale:

> "(Legislators) are immune from deterents to the uninhibited discharge of their (legislative) duty not for their private indulgence but for the public good." (parenthesis added).

The administration of a judicial office would be rendered virtually impossible if judicial discretion could be exercised only at the risk of civil liability for error or mistaken judgment.

One might note with interest the dissenting opinion of Mr. Justice Douglas in *Pierson* v *Ray*, supra, beginning at page 297. While the dissent would reject the board application of the judicial immunity doctrine, Justice Douglas conceded the applicability of the principle to cases such as the one at hand. In the separate opinion (18 LEd 2d at page 301, the Justice wrote):

> "... It would be unfair to require a judge to exercise his independent judgment and then to punish him for having exercised it in a manner which, in retrospect, was erroneous. Imposing liability for mistaken, though honest judicial acts, would curb the independent mind and spirit needed to perform judicial functions ..."

This reference to and quotation from the dissent in *Pierson* is not a subscription to the narrower view of judicial immunity as therein expressed. Rather, it is for the purpose of pointing up that even those authorities which would limit the application of the principle would, nevertheless in all liklihood, apply it fully to cases similar to the instant cause wherein there has not been any allegations of acts on the part of the Appellee, trial Judge, which, absent the doctrine itself, would impose liability. The doctrine obtains as to a judge except where he has acted *in clear absence of all jurisdiction over subject matter. Jacobson* v *Schaeffer*, C.A. Wis. 1971, 441 F2d 127.

Indeed, the dismissal of Petitioner's action in the District Court and the dismissal of his appeal below against both of these Respondents, ought to be sustained on Respondents' claim of immunity alone.

Inasmuch as the defense of judicial immunity is available to the Respondent Judge, it is likewise available to the Respondent Court Reporter, IRMA B. MILLER. (*Davis*

v *McTeer,* C.A. Mo. 1970, 431 F2d 81) It is well established that those whose functions are performed in a quasi-judicial capacity are "clothed with judicial immunity." *Stewart* v *Minnick,* 409 F2d 826, (9th Cir. 1969): *Peckham* v *Scanlon,* 241 F2d 761 (7th Cir. 1967): *Brown* v *Charles,* 309 F Supp LEd Wisc. 1970.

True, Petitioner has claimed that Respondent MILLER "did alter, rearrange, add to, leave out, and omit sections of the trial transcript in detriment to the Plaintiff," (Complaint page one) he is non-specific in this regard. Even if this was true to any extent, the failure to be specific contributes to the reasons for applying the immunity principle. Without knowing the respects in which the transcript was deficient, or altered, if, indeed, it was, one could not even speculate that any act of *alteration, re-arrangement, addition* or *omission* was committed outside the scope of the quasi-judicial duties of the Appellee Court Reporter.

The Respondent MILLER submits that the circumstances present here are clearly distinguishable from those present in *Washington* v *Official Court Stenographer,* 251 F Supp 945 (E.D. Penn. 1966). In that case, the substance of the ruling was that a court stenographer cannot claim to be clothed with the judicial immunity of a court whose own orders he has repeatedly disobeyed. The logic of that ruling is so evident as to require no argument. Its inapplicability to this cause is, likewise, evident.

The defense of judicial immunity should be available to both the Respondent judge, GEORGE W. CROCKETT, JR., and to the Respondent Court Reporter, IRMA B. MILLER, as well, and the order dismissing the appeal below should be permitted to stand by denying the writ prayed.

11. Assuming arguendo that there exists or could exist circumstances under which exceptions to the principle of judicial immunity might be appropriate, certainly none obtains in the case at hand per face of the complaint.

Neither the complaint itself nor Petitioner's summary of the facts, constituting a part of his application, discloses any specifics of the charges against the Respondent trial judge. His allegation that the judge "did preside over and participate in a kangaroo court" and "he did allow and take part in the denial of (Petitioner's) constitutional right to stand equally before the law . . ." (Complaint page one) really tells nothing of the acts by which Petitioner claims to have suffered harm. Petitioner's allegations are couched merely in vague generalities.

The record discloses no abuses by the Respondent Judge with respect to the criminal trial of the Petitioner. As to his conduct of the trial, the Respondent Judge invites the attention of this Court to the comments of the District Judge set forth on page four of the (unpublished) opinion and order dismissing Petitioner's complaint below:

> ". . . the transcript of the record persuades this Court that Judge Crockett (Respondent) conducted an eminently fair and orderly trial in the best tradition of judicial jurisprudence. He exercised meticulous care in all particulars during the course of the trial. His handling of the trial could serve as a model for courtroom procedure. The defendant at that trial is without grounds for complaint unless it be the American jury trial system itself."

The lower court included the foregoing commentary in its opinion after summarizing the conduct of the trial as evidenced by the record.

The dismissal of the cause by the District Court below

was clearly consistent with the purpose and scope of *Rule 8, Federal Rules of Civil Procedure, Title 28.* Interpreting *Rule 8,* the Circuit Court of Appeals, Cal. (*Gillibear* v *City of Richmond,* 417 F2d 426, 1969) held, in substance, that a complaint may be dismissed where it appears without a doubt that a plaintiff can prove no set of facts in support of his claim which would entitle him to relief, in a civil rights case. That is precisely the situation in the instant case as it relates to Respondents CROCKETT and MILLER. All of the acts of the Respondent judge with respect to Petitioner's criminal trial are of record, and that record affords no basis for civil action even in total absence of any theory of judicial immunity as a defense. As far as Respondent MILLER is concerned, althought it is claimed that she made alterations in the record, Petitioner offers nothing specific in this regard. As said in *Powell* v *Workman's Compensation Board of the State of New York,* 327 F2d 131 (1964):

> "A complaint in a case like this must set forth facts showing some intentional and purposeful deprivation of constitutional rights." (Citing *Snowden* v *Hughes,* 321 U.S. 1, 64 S.Ct. 397, 88 L.Ed 497 (1944).

The similarities of *Powell* with those of the instant case are striking. The principle enunciated in that case should govern here.

CONCLUSION

This dismissal of Petitioner's action against these Respondents was justified upon either or both of the grounds of judicial immunity and failure to state a claim upon which relief could be granted. The Petition for Writ of Certiorari should be denied.

Respectfully,
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Dated: March 5, 1974